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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 1834 of 1999
Date of decision: 19.12.2007

Jasvir Kaur and others ...Appellants

Versus

Bahadur Singh and others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. I.S.Brar, Advocate for the appellants

Mr. R.K.Girdhar, Advocate for the respondents.

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RAJESH BINDAL, J.

Two of the defendants are in appeal before this Court against the judgment and decree of the learned Lower Appellate court whereby that of the trial Court was reversed and the suit filed by the respondent no.1/plaintiff for joint possession and declaration, was decreed.

The claim made in the suit was that respondent no.1/plaintiff is joint owner in possession of 1/6th share in land measuring 100 kanals 16 marlas. It is averred in the plaint that Jawala Singh predecessor-in-interest of the parties to the dispute owned 149 kanals 13 marlas and 84 kanals and 2 marlas of land. After the death of Jawala Singh, mutation was sanctioned in favour of plaintiff, defendants no. 4 to 8 and Smt. Sant Kaur and Vir Singh in equal shares with regard to suit land. Karnail Singh sold his 1/6th share out of the joint land measuring 100 kanals 16 marlas vide registered sale deed dated July 23, 1960 for a sum of Rs. 4,000/- in favour of respondent no.1/plaintiff. In this way, he had become joint owner to the extent of 1/6th share in the land measuring 100 kanals 16 marlas besides his own share in the suit land. After appreciating the evidence led by the parties on record, learned trial Court though did not find any illegality as regards the execution of the sale deed, however, it was held that no right flow to the plaintiff on the basis of sale deed dated July 23, 1960. The appellants/defendants did not challenge the findings regarding validity of

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the sale deed before the learned Lower Appellate court and the appeal was filed only by the respondent no.1/plaintiff. The findings regarding validity of the sale deed was upheld by the learned Lower Appellate Court in para 15 of the judgment. After examining the entire material on record in detail connecting the share of the respective parties, learned Lower Appellate Court recorded its verdict in paras 28 and 29, which are extracted below:-

> "28. As per the admitted case before me Jawala Singh had eight heirs and after his death, the estate was inherited in 1/8th share by each share including Smt. Sant Kaur, his wife and Vir Singh, his son, since deceased. Vir Singh has also died and estate of Vir Singh was inherited by his mother Sant Kaur. After the death of Vir Singh, therefore, appellant-plaintiff and respondents no. 4 to 8 continued to be the co-sharer in the estate of Jawala Singh to the extent of 1/8th share each and Sant Kaur their mother to the extent of 1/4th share. Sant Kaur according to the appellant-plaintiff PW6 died in the year 1988 i.e. after the passing of the impugned judgment and decree of the year 1987. So up to the year 1987 Karnail Singh had 1/8th share in the total land of Jawala Singh as described in part 3 of the head note of the plaint. So, this decree would not be binding upon the rights of the plaintiff to the extent of 16 kanals 16 marlas of land in 1/8th share of Karnail Singh in the total land in question. When Smt. Sant Kaur inherited the estate of Vir Singh, her son. That inheritance would also be to the extent of 1/8th share of Vir Singh in the total land excluding 12 kanals 13 marlas of land from which there is pre-emption decree in favour of the plaintiff-appellant. There are the very clear facts in the present case which emerges out from the facts of the present case and very conveniently and properly relief to this extent can be granted to the appellant-plaintiff.

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29. As a result of my findings on various issues, the appeal is accepted setting aside the judgment of the learned trial Court and a decree is passed for joint possession of 16 kanals 16 marlas of the land out of 1/8th share of Karnail Singh in total land in dispute measuring 149 kanals 13 marlas and 84 kanals 2 marals, as mentioned in part 3 of the head note of the plaint and the decree passed in favour of respondents no. 1 to 3 dated 16.7.87 would not be binding upon the rights of the appellant-plaintiff to the extent of aforesaid 16 kanals 16 marlas of the land and the appellant is also entitled to joint possession of 12 kanals 13 marlas of land in the total land in suit, as aforesaid, as fully described in part-3 of the head note of the plaint out of the share of which Vir Singh s/o Jawala Singh was once owning. Apart from the own share of the appellant-plaintiff in the land including the share of estate which he has inherited by way of natural succession from Smt. Sant Kaur."

It was found that the respondent no.1/plaintiff is entitled to a decree of joint possession for 16 kanals 16 marlas of land out of 1/8th share of Karnail Singh in total land measuring 149 kanals 13 marlas and 84 kanals 2 marlas. Besides this, he was also held entitled to joint possession of 12 kanals 13 marlas apart from his own share inherited in the land. Learned counsel for the appellants could not point out any error in the calculation of shares/owned/inherited by the parties in the suit land. Once that is so, the findings recorded by the learned Lower Appellate Court simply remain findings of fact.

No substantial question of law arises in the present appeal and the same is dismissed.

December 19, 2007 **(Rajesh Bindal)**
Pka **Judge**